

APR 23 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CONTAINER STEVEDORING
COMPANY,

Petitioner,

v.

STEVEDORING SERVICES OF
AMERICA, HOMEPORT INSURANCE
COMPANY; JAMES BLUE; DIRECTOR,
OFFICE OF WORKERS
COMPENSATION PROGRAMS,

Respondents.

No. 06-72757

BRB Nos. BRB-05-0616/97-0992
95-LHC-1764
96-LHC-1785
OWCP-13-0090887
OWCP-13-0094452

MEMORANDUM*

On Petition for Review of an Order of the
Benefits Review Board

Argued and Submitted April 17, 2008
San Francisco, California

Before: KOZINSKI, Chief Judge, WALLACE, and N.R. SMITH, Circuit Judges.

There may be parts of the Benefits Review Board's (Board) April 17, 1998,
decision that could be interpreted as a re-weighing of the evidence in violation of

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Director, Office of Workers' Compensation v. Campbell Indus., 678 F.2d 836, 838 (9th Cir. 1982) (subsequent history omitted). A fair reading of the Board opinion, with appropriate deference given to the Board, leads us to conclude that re-weighting did not occur.

We hold that the Board was correct in determining that the Administrative Law Judge (ALJ) did not adequately consider the aggravation standard. *See Kelaita v. Director, Office of Workers' Comp. Programs*, 799 F.2d 1308, 1311 (9th Cir. 1986). The Board directed the ALJ to employ the appropriate legal standard and then to review the evidence under that standard. As stated by the Board, the remand was “for reconsideration [by the ALJ] of the issue under the proper legal standards.”

PETITION DENIED.